

Assembly Bill No. 1163

CHAPTER 281

An act to amend Section 94110 of the Education Code, relating to the California Educational Facilities Authority.

[Approved by Governor September 7, 2011. Filed with
Secretary of State September 7, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1163, Brownley. Education: California Educational Facilities Authority.

Existing law, the California Educational Facilities Authority Act, creates the California Educational Facilities Authority, the purpose of which is to provide institutions of higher education, including private colleges, with additional means for specified projects. The act defines "private college" or "private participating college" to mean a private college that neither restricts entry on racial or religious grounds nor requires students gaining admission to receive instruction in the tenets of a particular faith, and that participates with the authority in undertaking the financing and construction or acquisition of a project.

This bill would recast the definition of a "private college" or "private participating college" to mean a private college that does not restrict the admission of a student based on his or her race or ethnicity, provided that the financing does not violate specified constitutional provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 94110 of the Education Code is amended to read:

94110. As used in this chapter, the following words and terms have the following meanings, unless the context indicates or requires another or different meaning or intent:

(a) "Authority" means the California Educational Facilities Authority created by this chapter or any board, body, commission, department, or officer succeeding to the principal functions of the authority or to whom the power conferred upon the authority by this chapter is given by law.

(b) "Bond" means bonds, notes, debentures, or other securities of the authority issued pursuant to this chapter.

(c) "Cost," as applied to a project or portion thereof financed under this chapter, means all or any part of the cost of construction and acquisition of lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project, the cost of demolishing or removing buildings or structures on acquired land, including

the cost of acquiring lands to which the buildings or structures may be moved, the cost of machinery and equipment, financing charges, interest prior to, during, and for a period after completion of, the construction as determined by the authority, provisions for working capital, reserves for principal and interest and for extension, enlargements, additions, replacements, renovations and improvements, the cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates, administrative expenses, and other expenses necessary or incidental to determining the feasibility of constructing a project or incident to the construction or acquisition or financing of a project.

(d) “Dormitory” means a housing unit with necessary and usual attendant and related facilities and equipment.

(e) (1) “Educational facility” means a dormitory, dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, health care facility (including for an institution of higher education that maintains and operates a school of medicine, structures or facilities designed to provide services as a hospital or clinic, whether the hospital or clinic is operated directly by the institution of higher education or by a separate nonprofit corporation, the members of which consist of the educational institution or the members of its governing body), faculty and staff housing, parking, maintenance, storage, or utility facilities, and other related structures or facilities used for student instruction, conducting research, or operating an institution for higher education, and related facilities and equipment.

(2) “Educational facility” does not include a facility used or to be used for sectarian instruction or as a place for religious worship, or a facility used or to be used primarily in connection with a part of the program of a school or department of divinity.

(f) “Faculty and staff housing” means a residential unit owned by a participating college or participating nonprofit entity for use by an individual holding a faculty appointment or a staff position at a public university, public college, or participating college.

(g) “Participating nonprofit entity” means an entity within the meaning of paragraph (3) of subsection (c) of Section 501 of Title 26 of the United States Code that, pursuant to this chapter for the purpose of owning student, faculty, or staff housing, as approved by, and for participation with, the authority, undertakes the financing and construction or acquisition of student, faculty, or staff housing, on real property owned or leased by the entity, for the benefit of a public college, public university, or participating private college. The authority may determine any additional qualifications of a participating nonprofit entity through regulations or guidelines.

(h) “Participating private college” or “participating college” means a private college that participates with the authority in undertaking the financing and construction or acquisition of a project and does not restrict the admission of a student based on his or her race or ethnicity, provided that the financing does not violate Section 5 of Article XVI of the California

Constitution or the establishment clause of the First Amendment to the United States Constitution.

(i) (1) “Private college” means an institution for higher education other than a public college, situated within the state and that, by virtue of law or charter, is a nonprofit private or independent degree-granting educational institution that is regionally accredited and empowered to provide a program of education beyond the high school level.

(2) For purposes of obtaining financing under this chapter, “private college” also includes either of the following:

(A) A nonprofit affiliate, established on or prior to January 1, 2005, of one or more private colleges, as defined in paragraph (1), the sole or primary purpose of which is to provide administrative or other support services to an affiliated private college or private colleges, and that undertakes the financing of a project for the exclusive use and benefit of one or more of the affiliated private colleges.

(B) A private nonprofit research organization engaged in basic research and advanced education at the predoctoral and postdoctoral levels through personnel situated within the state, but only if the organization previously has borrowed the proceeds of bonds or other obligations previously issued by the authority.

(j) (1) “Project” means a dormitory or an educational facility, faculty or staff housing, or any combination thereof, or any function concerning student loans, or interests therein, as determined by the authority.

(2) For a participating nonprofit entity, “project” means the construction or acquisition of student housing or faculty and staff housing. The authority, in consultation with the top administrative officials and the participating nonprofit entity, shall develop and adopt regulations to ensure, to the greatest extent practicable, that each project involving a participating nonprofit entity is used to house students, faculty, or staff of the participating private college, public college, or public university. The student, faculty, or staff housing shall meet all of the following criteria:

(A) Upon completion or acquisition of the project, the project will be owned by a participating nonprofit entity and located on real property owned, or leased by, that entity.

(B) The top administrative official of the public university, public college, or participating private college that the project is intended to benefit, verifies the need for housing and financing assistance in a specific area pursuant to subparagraph (D).

(C) The project is monitored on an annual basis by the authority to ensure that it meets the requirements of subparagraph (E) and all other regulatory agreements entered into by the authority.

(D) The project is located within a five-mile radius of the boundary of a campus or satellite center of the public college, public university, or participating private college that the project is intended to benefit. The participating nonprofit entity may request approval from the top official of the institution for a project that is located outside the five-mile radius, provided that all of the following criteria are met:

- (i) There are no available and feasible sites within the five-mile radius.
- (ii) The project is near a mass transit destination.
- (iii) The time required to commute from campus to the mass transit destination, as estimated by the top administrative official, typically does not exceed 30 minutes.

(E) (i) The project includes and maintains for 40 years a restriction to the grant deed on the real property on which the student or faculty and staff housing is to be located. The grant deed shall accomplish all of the following:

(I) Give the public college, public university, or participating private college that the project is intended to benefit the right, but not the obligation, to purchase the property at fair market value.

(II) Ensure that students, faculty, or staff of the affected campus will have first right of refusal to all available units.

(III) Require that, to the greatest extent feasible, at least 50 percent of student residents will meet the criteria for need-based financial assistance, as determined by the top administrative official of the affected campus.

(IV) Require that all contracts for construction and renovation of the proposed project shall be subject to, and comply with the provisions referenced in, Section 10128 of the Public Contract Code.

(ii) For purposes of this subparagraph, the authority, through regulation or rule, shall define “student” and “faculty,” taking into consideration enrollment status requirements and employment status requirements. The definitions of “student” and “faculty” may be different for each participating campus.

(k) “Public college” means a community college.

(l) “Public university” means any campus of the University of California, the California State University, or the Hastings College of the Law.

(m) “Student housing” means a residential unit owned by a participating nonprofit entity, and located on real property owned by that entity, for use by an individual enrolled at a public college, public university, or participating private college.

(n) “Student loan” means a loan having terms and conditions acceptable to the authority that is made to finance or refinance the costs of attendance at a private college or a public college and that is approved by the authority, if the loan is originated pursuant to a program that is approved by the authority.

(o) “Top administrative official” means the chancellor in the case of a campus of the University of California, the dean in the case of the Hastings College of the Law, the president in the case of a campus of the California State University, the president in the case of a campus of the California Community Colleges, or the president or highest ranking official in the case of a participating private college.